

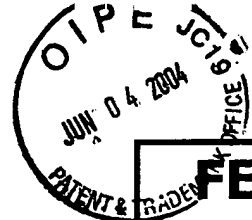


TRANSMITTAL FORM (to be used for all correspondence after initial filing)		Application Number	10/708,146
		Filing Date	February 11, 2004
		First Named Inventor	Tobler, Peter Arthur
		Group Art Unit	2857
		Examiner Name	Not yet known
Total Number of Pages in This Submission	246	Attorney Docket Number	718026.64

ENCLOSURES (check all that apply)		
<input checked="" type="checkbox"/> Fee Transmittal Form	<input type="checkbox"/> Drawing(s)	<input type="checkbox"/> After Allowance Communication to Technology Center (TC)
<input type="checkbox"/> Fee Attached	<input type="checkbox"/> Licensing-related Papers	<input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences
<input type="checkbox"/> Amendment / Reply	<input checked="" type="checkbox"/> Petition	<input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief)
<input type="checkbox"/> After Final	<input type="checkbox"/> Petition to Convert to a Provisional Application	<input type="checkbox"/> Proprietary Information
<input type="checkbox"/> Affidavits/declaration(s)	<input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address	<input type="checkbox"/> Status Letter
<input type="checkbox"/> Extension of Time Request	<input type="checkbox"/> Terminal Disclaimer	<input checked="" type="checkbox"/> Other Enclosure(s) (please identify below); return postcard
<input type="checkbox"/> Express Abandonment Request	<input type="checkbox"/> Request for Refund	
<input type="checkbox"/> Information Disclosure Statement	<input type="checkbox"/> CD, Number of CD(s) _____	
<input type="checkbox"/> Certified Copy of Priority Document(s)		
<input type="checkbox"/> Response to Missing Parts/Incomplete Application	Remarks:	
<input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53		
SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT		
Firm or Individual Name	Kevin M. Kercher, Reg. No. 33,408 Blackwell Sanders Peper Martin LLP	
Signature		
Date	June 4, 2004	

CERTIFICATE OF TRANSMISSION/MAILING			
I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as Express Mail in an envelope addressed to: Commissioner for Patents, Attn: OIPEP.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below. Express Mail Label No.: EV320679801US			
Typed or printed name	Beth Hookway		
Signature		Date	6-4-04

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U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

FEE TRANSMITTAL for FY 2004

Effective 10/01/2003. Patent fees are subject to annual revision.

Complete if Known

<input type="checkbox"/> Applicant claims small entity status. See 37 CFR 1.27	Application Number	10/708,146
TOTAL AMOUNT OF PAYMENT (\$)	Filing Date	February 11, 2004
130.00	First Named Inventor	Peter Arthur Tobler, et al.
	Examiner Name	Not yet known
	Art Unit	2857
	Attorney Docket No.	718026.64

METHOD OF PAYMENT (check one)

☐ Check ☐ Credit card ☐ Money ☐ Other ☐ None

☒ Deposit Account: Order

Deposit Account Number: 11-0160

Deposit Account Name: BLACKWELL SANDERS PEPPER MARTIN LLP

The Commissioner is authorized to: (check all that apply)

☒ Charge fees indicated below ☒ Credit any overpayments

☒ Charge any additional fee(s) during the pendency of this application

☐ Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.

FEE CALCULATION

1. BASIC FILING FEE

Large Entity		Small Entity		Fee Description	Fee Paid
Fee Code	Fee (\$)	Fee Code	Fee (\$)		
1001	770	2001	385	Utility filing fee	
1002	340	2002	170	Design filing fee	
1003	530	2003	265	Plant filing fee	
1004	770	2004	385	Reissue filing fee	
1005	160	2005	80	Provisional filing fee	
SUBTOTAL (1)					\$

2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE

Total Claims	Extra Claims	Fee from below	Fee Paid
20**	=	X	=
Independent Claims	-3**	=	X
Multiple Dependent			

Large Entity		Small Entity		Fee Description	Fee Paid
Fee Code	Fee (\$)	Fee Code	Fee (\$)		
1202	18	2202	9	Claims in excess of 20	
1201	86	2201	43	Independent claims in excess of 3	
1203	290	2203	145	Multiple dependent claim, if not paid	
1204	86	2204	43	** Reissue independent claims over original patent	
1205	18	2205	9	** Reissue claims in excess of 20 and over original patent	
SUBTOTAL (2)					\$

**or number previously paid, if greater; For Reissues, see above

FEE CALCULATION (continued)

3. ADDITIONAL FEES

Large Entity		Small Entity		Fee Description	Fee Paid
Fee Code	Fee (\$)	Fee Code	Fee (\$)		
1051	130	2051	65	Surcharge - late filing fee or oath	
1052	50	2052	25	Surcharge - late provisional filing fee or cover sheet	
1053	130	1053	130	Non-English specification	
1812	2,520	1812	2,520	For filing a request for <i>ex parte</i> reexamination	
1804	920*	1804	920*	Requesting publication of SIR prior to Examiner action	
1805	1,840*	1805	1,840*	Requesting publication of SIR after Examiner action	
1251	110	2251	55	Extension for reply within first month	
1252	420	2252	210	Extension for reply within second month	
1253	950	2253	475	Extension for reply within third month	
1254	1,480	2254	740	Extension for reply within fourth month	
1255	2,010	1155	1,005	Extension for reply within fifth month	
1401	330	2401	165	Notice of Appeal	
1402	330	2402	165	Filing a brief in support of an appeal	
1403	290	2403	145	Request for oral hearing	
1451	1,510	1451	1,510	Petition to institute a public use proceeding	
1452	110	2452	55	Petition to revive - unavoidable	
1453	1,330	2453	665	Petition to revive - unintentional	
1501	1,330	2501	665	Utility issue fee (or reissue)	
1502	480	2502	240	Design issue fee	
1503	640	2503	320	Plant issue fee	
1460	130	1460	130	Petitions to the Commissioner	130.00
1807	50	1807	50	Processing fee under 37 CFR 1.17(q)	
1806	180	1806	180	Submission of Information Disclosure Stmt	
8021	40	8021	40	Recording each patent assignment per property (times number of properties)	
1809	770	2809	385	Filing a submission after final rejection (37 CFR 1.129(a))	
1810	770	2810	385	For each additional invention to be examined (37 CFR 1.129(b))	
1801	770	2801	385	Request for Continued Examination (RCE)	
1802	900	1802	900	Request for expedited examination of a design application	
Other fee (specify)					
*Reduced by Basic Filing Fee Paid					
SUBTOTAL (3)					\$ 130.00

SUBMITTED BY

(Complete (if applicable))

Name (Print/Type)	Kevin M. Kercher	Registration No. (Attorney/Agent)	33,408	Telephone	314-345-6000
Signature		Date	June 9 2004		

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

This collection of information is required by 37 CFR 1.17 and 1.27. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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06-07-04

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PATENT 718026.64

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Peter Arthur Tobler, et al.)	
U. S. Application Serial Number: 10/708,146)	Examiner: Unknown.
U.S. Filing Date: February 11, 2004)	Group Art Unit: 2857
Priority Data: U.S. Provisional Patent Application)	
No. 60/446,493, filed February 11, 2003)	Confirmation No. 2145
)	Customer No. 27,128
For: A SYSTEM AND METHOD FOR)	
MONITORING FACILITY DATA)	
Attorney Docket: 718026.64)	

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PETITION UNDER 37 C.F.R. SECTION 1.47 (b)

INTRODUCTION:

The Assignee's Petition is to overcome the fact that one of the named inventors, i.e., Joel Garringer, is not willing to sign the Declaration associated with U.S. Patent Application No. 10/708,146.

STATEMENT OF FACTS:

There was an attempt to contact Joel Garringer by the Assignee's In-House Legal Department with a request to execute the formal documents associated with the above patent application. Mr. Garringer's response, dated March 18, 2004, in an e-mail to Ms. Frances Silva, indicated that he was unwilling to sign the documents and was opposed to the idea of software patents, as shown in Exhibit A. The Assignee's Attorney, i.e., Kevin M. Kercher, then on at

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least two occasions contacted Joel Garringer by telephone in an attempt to persuade him to comply with his legal obligations with the last telephone call being on March 31, 2004. Mr. Garringer's response, dated April 1, 2004, is attached as Exhibit B, wherein he states that: "In light of the evidence that patents are increasingly becoming tools for anti-competitive practices and that the system is increasing obstructing rather than serving and protecting inventors and original thinkers, I don't see how I can in good conscience participate in the patent system."

The country of citizenship for Joel Garringer is the United States of America. His address is 1307 N. Irvington Ave., Tulsa, Oklahoma 74115. In spite of this rejection, a complete patent application was sent to Joel Garringer on April 20, 2004, by Federal Express, in accordance with the Manual of Patent Examining Procedure Section 409.03(d). The Federal Express receipt providing evidence that this package was delivered to Joel Garringer is provided as Exhibit C. This was a bone fide attempt to present Mr. Garringer with application papers, which was successful and acknowledged by Mr. Garringer. This correspondence to Mr. Garringer is enclosed, as Exhibit D. There was a request to indicate refusal that was not returned. However, the Letter made it clear that if this Attorney did not receive the signed formal documents in one week, that there would be an assumption that Mr. Garringer had refused to sign as confirmation of Mr. Garringer's previous rejections. On April 27, 2004, a letter dated April 24, 2004 was received from Mr. Garringer. This Letter is attached as Exhibit E. Mr. Garringer again reiterates his refusal to sign and indicates that "...the patent system does a poor job of protecting the rights of inventors and the interests of the community at large." Therefore, Mr. Garringer does not want to participate in the patent process. My follow-up letter to Mr. Garringer rectifies some the erroneous statements that Mr. Garringer made in his Letter and is attached as Exhibit F. There was no response to my last correspondence.

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Joel Garringer was a contract employee for Tyson Foods, Inc. Joel Garringer entered into a Staff Consultant Employment Agreement with Maxim Group Inc. to "...assign full and absolute title and interest to the client of the Maxim Group Inc. for all inventions, improvements or discoveries made by..." Mr. Garringer as described in Section 7. This Staff Consultant Employment Agreement is attached as Exhibit G. This is evidence that the Inventor, i.e., Joel Garringer, has agreed in writing to assign the Invention to Tyson Foods, Inc. and provides proof of Tyson Foods, Inc.'s proprietary interest under 37 C.F.R. Section 1.47(b). The Maxim Group Inc. then merged into TEKsystems, Inc. The Articles of Merger between these entities is attached as Exhibit H. There is also a Staffing Services Agreement attached as Exhibit I between TEKsystems, Inc. and Tyson Foods, Inc. indicating in Section 12.1 that "all work product of every kind performed by any Contract Employee on behalf of Client shall be the sole and exclusive property of Client." Also, enclosed are the numerous invoices listing Joel Garringer as providing work for Tyson Foods, Inc., in Exhibit J, as a contract employee for TEKsystems, Inc. Therefore, it is respectfully believed, that Tyson Foods, Inc. owns any and all patent rights that arose from Mr. Garringer's work associated with "A SYSTEM AND METHOD FOR MONITORING FACILITY DATA" and Tyson Foods, Inc. has a clear and unequivocal proprietary interest in this patent application, i.e., U.S. Patent Application No. 10/708,146.

There will be irreparable damage and the rights of the parties will not be preserved if this Petition is denied. This patent application claims priority of U.S. Provisional Patent Application No. 60/446,493, which was filed on February 11, 2003. Tyson Foods, Inc. will lose this claim to priority.

POINTS TO BE REVIEWED:

1. Can a patent application be filed when the inventor refuses to sign?

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ACTION REQUESTED:

Granting of Petition so that U. S. Patent Application Serial Number 10/708,146 will not require the signature of Joel Garringer on the Declaration, who refuses to sign such Declaration.

DISCUSSION:

Joel Garringer has made it very clear in both telephone conversations and correspondence, Exhibits A, B and E, with Tyson Food Inc.'s Attorney, Kevin M. Kercher, that he will not sign the Declaration associated with U. S. Patent Application Serial Number: 10/708,146 primarily based on his belief that the U.S. patent system is flawed and that he does not want to participate in any manner whatsoever. Based on the contract signed by Joel Garringer, Exhibit G, any rights Mr. Garringer may have to this patent application are contractually obligated to be assigned to Tyson Foods, Inc. There would be irreparable harm to Tyson Foods, Inc. if this Petition is not granted as there is a priority claim to U.S. Provisional Patent Application No. 60/446,493.

CONCLUSION:

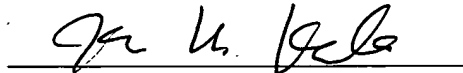
It is respectfully believed that there is full compliance with 37 C.F.R. Section 1.47(b) in its entirety. Joel Garringer has specifically refused to sign the Declaration both over the telephone and in writing on several occasions. Joel Garringer had previously contractually agreed to assign all of his rights in U. S. Patent Application Serial Number 10/708,146 to Tyson Foods, Inc. Tyson Foods, Inc. would be irreparably harmed if this Petition is not granted since the priority claim to U.S. Provisional Patent Application No. 60/446,493 would be lost.

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Therefore, it is respectfully requested that this Petition be granted. If a telephone conference would facilitate resolving any issue related to this Petition, the undersigned attorney would appreciate and welcome such a telephone conference. Contact information for this attorney is provided below.

Respectfully submitted,

Dated: June 4, 2004



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